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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

AVNER GREENWALD, individually and on behalf of all others similarly situated,

Plaintiff,

v.

RIPPLE LABS INC., et al.,

Defendants.

CASE NO.: 4:18-cv-04790-PJH

(1) MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFF'S MOTION TO REMAND;

(2) DECLARATION OF VIRGINIA F. MILSTEAD IN SUPPORT THEREOF (filed under separate cover); and

(3) [PROPOSED] ORDER (filed under separate cover).

Date: October 24, 2018
Time: 9:00 a.m.
Courtroom: 3
Judge: Hon. Phyllis J. Hamilton

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Defendants Ripple Labs Inc. ("Ripple"), XRP II, LLC ("XRP II"), Bradley Garlinghouse, Christian Larsen, Ron Will, Antoinette O'Gorman, Eric van Miltenburg, Susan Athey, Zoe Cruz, Ken Kurson, Ben Lawsky, Anja Manuel, and Takashi Okita (collectively, "Individual Defendants," and with Ripple and XRP II, "Defendants") respectfully submit this Opposition to Plaintiff's Motion to Remand ("Motion" or "Mot.") (ECF No. 15).

ISSUES TO BE DECIDED

1. Whether Plaintiff's Motion should be denied because this action, asserting claims under the Securities Act of 1933, was properly removed under alienage provisions of the Class Action Fairness Act ("CAFA"), 28 U.S.C. §§ 1332(d), 1453?

2. Whether Plaintiff's Motion should be denied because the decision in Luther v. Countrywide Home Loans Servicing LP, 533 F.3d 1031 (9th Cir. 2008), upon which Plaintiff principally relies, (i) is distinguishable, as the instant case invokes alienage jurisdiction while Luther only involved minimal diversity; and/or (ii) should be limited or reconsidered because it is clearly irreconcilable with the United States Supreme Court decision in Dart Cherokee Basin Operating Co. v. Owens, 135 S. Ct. 547 (2014), and/or subsequent court of appeals and district court authority?

3. Whether Section 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77v(a), bars removal under CAFA of international class actions asserting only violations of the Securities Act?

MEMORANDUM OF POINTS AND AUTHORITIES

I. PRELIMINARY STATEMENT

This putative class action ("Action") concerns Defendants' alleged sales of a virtual currency—XRP—"to the general public through global, online cryptocurrency exchanges." (Compl. ¶ 79 (ECF No. 1-1).) Raising a misguided theory that XRP is a "security" under federal securities law, Plaintiff, a citizen of Israel who allegedly engaged in unspecified purchases and sales of XRP between December 14, 2017 and May 12, 2018 (Compl. ¶ 14), filed this Action in the Superior Court of California, County of San Mateo. Plaintiff alleges violations of the registration requirements of the federal Securities Act purportedly on behalf of a global class comprised of all

purchasers of XRP since July 3, 2015. (Compl. ¶ 2.) Because this far-reaching, international class action is exactly the type of litigation for which Congress sought to ensure a federal forum through CAFA, Defendants removed this Action to this Court pursuant to CAFA's express provisions. (ECF No. 1); see 28 U.S.C. §§ 1332(d), 1453(b); Standard Fire Ins. Co. v. Knowles, 568 U.S. 588, 595 (2013) (observing that CAFA's "primary objective" was to ensure "'Federal court consideration of interstate cases of national importance'").[1]

Plaintiff does not, and cannot, dispute that the requirements for CAFA removal are satisfied here. CAFA confers federal jurisdiction and authorizes removal if the class has more than 100 members, at least one member of a plaintiff class is a citizen of a foreign country or a citizen of a different state from a defendant, and the amount in controversy exceeds $5 million. See United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union v. Shell Oil Co., 602 F.3d 1087, 1089 (9th Cir. 2010); 28 U.S.C. §§ 1332(d), 1453(b). This Action, purportedly brought on behalf of "thousands" across the world and placing at least $167.7 million in controversy, satisfies CAFA's requirements. (Compl. ¶¶ 52, 89.)

Instead, Plaintiff argues that Luther v. Countrywide Home Loans Servicing LP, 533 F.3d 1031 (9th Cir. 2008), concluded that Section 22(a) of the Securities Act ("Section 22(a)"), which bars removal of cases arising under the Securities Act, "trumps" CAFA's express grant of removal authority and forecloses removal of any case alleging violations of the Securities Act, no matter what the statutory basis for removal. (Mot. 3:1.) Plaintiff is wrong. Luther involved a removal based on minimum diversity jurisdiction under CAFA, where the only policy informing the court's reasoning was CAFA's provision for "removal of high-dollar class actions." Luther, 533 F.3d at 1034. However, this Action invokes minimum ***alienage*** jurisdiction—jurisdiction arising because Plaintiff and members of the class are citizens of foreign countries and some Defendants, as alleged, are citizens of California, while Plaintiff fails to allege the citizenship of several Defendants. 28 U.S.C. § 1332(d)(2)(B). Luther did not address the interplay between CAFA's alienage jurisdiction provision and Section 22(a) and Plaintiff cites ***no case*** where a foreign citizen invoked Section 22(a)'s removal bar to prevent removal of a case based on alienage jurisdiction.

[1] All emphasis is added and citations are omitted unless otherwise indicated.

As explained below, Part IV.A.1, alienage jurisdiction is analytically distinct from diversity jurisdiction and rests on separate and important foreign policy concerns. Both the historical purpose of alienage jurisdiction and the purpose of CAFA in expanding it are to ensure a federal forum for actions involving foreign citizens. Such actions, especially the far-reaching class actions covered by CAFA, inherently affect foreign relations and are therefore of national, not local, importance. See United States v. Curtiss-Wright Exp. Corp., 299 U.S. 304, 317 (1936) (holding that the federal government has the sole power to affect foreign relations). This Action in particular, involving "issues of first impression regarding the federal securities laws applicability to a nascent technology," Coffey v. Ripple Labs Inc., 2018 WL 3812076, at *7 (N.D. Cal. Aug. 10, 2018), raised on behalf of alleged purchasers of XRP around the world—including in countries that are developing their own laws to address virtual currencies—squarely raises the foreign relations concerns at the heart of alienage jurisdiction. Luther did not present or address the circumstance where the distinct federal policies of alienage jurisdiction would be frustrated by application of Section 22(a). As such, neither its reasoning nor its holding forecloses removal here.

Aside from Luther's interpretation of the Section 22(a) removal bar, Plaintiff has provided no other basis for remanding this Action. As this Court recently concluded in its thorough analysis in Coffey, the plain language of CAFA's removal statute includes only three express, specific, and enumerated exceptions to removal authority. See Coffey, 2018 WL 3812076, at *6-10. CAFA thus prohibits removal only of cases falling within one of those three exceptions, id., none of which applies here. The reasoning of this Court's decision in Coffey on this score is fully applicable here.

Finally, should the Court nonetheless find that Luther governs (it should not), Defendants respectfully submit that the decision in Luther is clearly irreconcilable with subsequent United States Supreme Court and other court of appeal and district court decisions. Luther, therefore, should be limited to the narrow question it addressed—whether cases asserting only Securities Act claims can be removed under CAFA's minimal diversity provisions—or Luther should be reconsidered. The Court should deny Plaintiff's Motion.

II. FACTUAL BACKGROUND

Defendant Ripple was incorporated in Delaware and is currently headquartered in San

Francisco, California. (Compl. ¶ 15.) "Ripple provides one frictionless experience to send money globally using the power of blockchain. By joining Ripple's growing, global network, financial institutions can process their customers' payments anywhere in the world instantly, reliably and cost-effectively. Banks and payment providers can use the digital asset XRP to further reduce their costs and access new markets." (Ex. 1.)[2] Defendant XRP II is a subsidiary of Ripple, also headquartered in San Francisco, California. (Compl. ¶ 16.) The Individual Defendants are alleged to be directors and officers of Ripple. (Id. ¶¶ 17-27.)

Virtual currencies are generally defined as "'digital assets used as a medium of exchange.'" Commodity Futures Trading Comm'n v. McDonnell, 287 F. Supp. 3d 213, 218 (E.D.N.Y. 2018). "They are stored electronically in 'digital wallets' and exchanged over the internet through a direct peer-to-peer system" called a "blockchain." Id. As one court, concluding that a virtual currency is a "commodity" (not a security) within the regulatory purview of the Commodity Futures Trading Commission, described it:

> The "blockchain" serves as a digital signature to verify the exchange. "The public nature of the decentralized ledger allows people to recognize the transfer of virtual currency from one user to another without requiring any central intermediary in which both users need to trust." Some experts believe blockchain technology underlying virtual currencies will serve to "enhance [future] economic efficiency" and have a "broad and lasting impact on global financial markets in payments, banking, securities settlement, title recording, cyber security and trade reporting and analysis."

Id. (alteration in original). The digital asset XRP, which Ripple customers consisting of banks and payment providers can use as a "reliable, on-demand option to source liquidity for cross-border payments" (Ex. 2), is built on open-source blockchain technology and is a form of virtual currency. In fact, both the U.S. Department of Justice and the Financial Crimes Enforcement Network, a bureau of the U.S. Department of Treasury, have previously concluded that XRP is a virtual currency subject to Bank Secrecy Act regulations. (Ex. 3 ¶¶ 17-19.)

Plaintiff alleges Ripple created 100 billion XRP in 2013 and that "[f]rom 2013 to the present" Defendants have "engaged in an ongoing scheme to sell XRP to the general public."

[2] All references to "Ex." refer to exhibits attached to the Declaration of Virginia F. Milstead, filed concurrently herewith.

(Compl. ¶¶ 29, 38.) Plaintiff further alleges that "Defendants sold XRP to the general public through global, online cryptocurrency exchanges" and that "XRP can be bought or sold on over 50 exchanges." (Id. ¶ 79.) Between December 14, 2017 and May 12, 2018, Plaintiff allegedly "bought and sold XRP in both USD and Bitcoin" in unspecified transactions. (Id. ¶ 14.) Plaintiff does not allege that he lacked information about the nature of these transactions or that Defendants' alleged activities were in any way inconsistent with the Department of Justice and Department of Treasury's prior determinations involving XRP. Nevertheless, Plaintiff claims that he was somehow injured because Defendants were allegedly required to register XRP as a "security" with the Securities & Exchange Commission ("SEC") but failed to do so. (Id. ¶ 37.)

On July 3, 2018, Plaintiff filed this putative class action in the Superior Court of California, San Mateo County, the fourth of its kind, purportedly on behalf of "all investors who purchased" XRP "on or after July 3, 2015 and were damaged thereby." (Id. ¶ 2.) Plaintiff alleges that Defendants violated Sections 5, 12(a)(1), and 15 of the Securities Act—statutes respectively governing the registration and sale of securities and imposing "control person" liability on violators of securities laws. (Id. ¶¶ 94-110.) Plaintiff seeks, among other things, rescission of all XRP purchases, damages, and a constructive trust over the proceeds of Defendants' alleged sales of XRP. (Id. at 21.) On August 8, 2018, Defendants timely removed this Action to this Court pursuant to CAFA.

III. DEFENDANTS PROPERLY REMOVED THIS ACTION PURSUANT TO CAFA

CAFA amended the diversity and alienage jurisdiction statute by adding 28 U.S.C. § 1332(d) and created a separate statutory provision authorizing removal of class actions meeting the requirements of Section 1332(d). See 28 U.S.C. § 1453(b). Under CAFA, a putative class action may be removed to the appropriate federal district court if (1) the action purports to be a "class" action brought on behalf of 100 or more members; (2) any member of a class of plaintiffs is a citizen of a state different from any defendant, or any member of a plaintiff class is a citizen of a foreign country and any defendant is a citizen of a state (or vice versa); and (3) the amount in controversy exceeds $5 million. See 28 U.S.C. §§ 1332(d)(2), (d)(5)(B), 1453(b). In his Motion, Plaintiff does not dispute that this Action meets every one of these three requirements.

Class Exceeds 100 Members. First, this is an alleged class action brought on behalf of over 100 members. Plaintiff purports to assert claims on behalf of a "class" consisting of "thousands of members." (Compl. ¶¶ 87, 89.) That well exceeds the requirements of CAFA. See 28 U.S.C. § 1332(d)(1)(B), (5)(B).

Alienage. Second, alienage jurisdiction exists (i.e., at least one class member plaintiff is a foreign citizen and at least one defendant is a U.S. citizen), which satisfies Section 1332(d)(2). On the one hand, at least three of the Defendants are allegedly citizens of California. (Compl. ¶¶ 15-27.) On the other hand, there are members of the putative class who are citizens of foreign countries. Plaintiff himself is a resident and citizen of Israel. (Compl. ¶ 14; see also Mot. 5:1-11 (acknowledging Plaintiff's foreign citizenship).)

Plaintiff purports to bring this Action on behalf of an international class. The Complaint describes a putative class of "all persons or entities who purchased XRP from July 3, 2015 through the present" without any geographic limitation. (Compl. ¶ 87.) The Complaint further alleges that Defendants have sold XRP to putative class members on "global, online cryptocurrency exchanges," which are accessible on the internet and therefore throughout the U.S. and the world. (Compl. ¶¶ 78-79; see also id. ¶ 41 (describing "50 worldwide" exchanges).) Additionally, the Complaint alleges that "[b]y way of the internet, including Ripple Labs' website, Twitter, and the over 50 cryptocurrency exchanges that trade XRP, interstate means are used in connection with the offer and sale of XRP." (Compl. ¶ 77.) Given these allegations, it is clear that the putative class includes citizens of foreign countries, including Plaintiff himself, satisfying CAFA's alienage requirements. See 28 U.S.C. § 1332(d)(2)(B).

Amount in Controversy. Third, this Action meets CAFA's amount-in-controversy requirement of $5 million. 28 U.S.C. § 1332(d)(6). Among other things, Plaintiff seeks the rescission of Defendants' alleged sales of XRP to putative class members (Compl. at 21(C)) and alleges that in the first quarter of 2018 alone, "Defendants sold at least $167.7 million worth of XRP." (Compl. ¶ 52.) If all such sales were rescinded, the amount in controversy would exceed $5 million. While Defendants strongly deny that Plaintiff or any putative class members are entitled to recover any amount (or any other relief), Plaintiff plainly seeks to recover an aggregate

amount over $5 million. See also Compl. at 21(G) (seeking constructive trust); Compl. ¶ 52 ($167.7 million); Holt v. Noble House Hotels & Resort, Ltd., 2018 WL 539176, at *4 (S.D. Cal. Jan. 23, 2018) (considering amount over which plaintiff sought a constructive trust and disgorgement in assessing amount in controversy).

Exceptions. None of the exceptions to removal set forth in CAFA applies to bar removal here. This Action does not (i) involve a "covered security," as defined by 15 U.S.C. § 77p(f)(3); (ii) relate to the internal affairs or governance of a corporation and arise under the laws of the state in which such corporation was formed; or (iii) relate to the rights, duties, and obligations relating to or created by or pursuant to any security. See 28 U.S.C. § 1453(d)(1)-(3).

IV. NEITHER SECTION 22(a) NOR LUTHER PREVENTS REMOVAL HERE

A. Luther Is Not Binding Because It Did Not Consider Alienage Jurisdiction

Plaintiff argues that, even though this Action meets the requirements for removal under CAFA, Section 22(a) nevertheless bars removal. (Mot. 2-3.) Section 22(a) provides for concurrent jurisdiction in state and federal courts over alleged violations of the Securities Act. See 15 U.S.C. § 77v(a). It further provides, "no case arising under [the Securities Act] and brought in any State court of competent jurisdiction shall be removed to any court of the United States." 15 U.S.C. § 77v(a). Plaintiff offers no textual analysis to explain why Section 22(a) provides an exception to removal authority under CAFA. Plaintiff's sole argument is that the decision of the United States Court of Appeals for the Ninth Circuit in Luther v. Countrywide Home Loans Servicing LP, 533 F.3d 1031 (9th Cir. 2008), compels remand. (Mot. 2:22-4:18.)[3]

In Luther, the plaintiff asserted claims only under the Securities Act. See Luther, 533 F.3d

[3] Plaintiff also argues that Cyan, Inc. v. Beaver County Emps. Ret. Fund, 138 S. Ct. 1061 (2018), which concluded that the Securities Litigation Uniform Standards Act of 1998 ("SLUSA") did not provide a basis for removal of actions asserting solely Securities Act claims, somehow supports remand here because "CAFA was not even raised as a potential source of defeating the removal ban" in Cyan. (Mot. 2:12-16, 3 n.3.) However, this Court previously concluded that Cyan has "no bearing on removability under CAFA." Coffey, 2018 WL 3812076, at *3. Furthermore, contrary to Plaintiff's argument, Cyan's silence concerning CAFA is not "notabl[e]." (Mot. 3 n.2.) The defendants in Cyan ***did not remove the action at all***; their argument was about the concurrent jurisdiction provision in Section 22(a). The Court addressed removability under SLUSA only because the federal government raised it as amicus curiae, and there is no reason the federal government would have raised removability under CAFA in that context. See Cyan, 138 S. Ct. at 1069. Cyan involved "covered securities" under SLUSA and thus fell within one of CAFA's express ***exceptions to removal***. Id. at 1076-78.

at 1032-33. The court held that a class action brought in state court alleging only violations of the Securities Act was not removable even though it met the requirements of CAFA because the removal bar in Section 22(a) trumped CAFA. Id. at 1034. However, Luther involved a removal based on minimum diversity between citizens of the United States. See Luther, 533 F.3d at 1033-34. The Luther court did not address the situation where, as here, Defendants removed based on CAFA ***alienage*** jurisdiction because the plaintiff was a citizen of a foreign country purporting to sue on behalf of a worldwide class. (See Compl. ¶¶ 14, 79; see also supra Part III.) Indeed, Plaintiff identifies ***no case*** (and Defendants have been unable to locate any) in which a foreign citizen invoked Section 22(a)'s removal bar to prevent removal of a case based on alienage jurisdiction.

Alienage jurisdiction implicates uniquely federal policy considerations that are present in this case and that were not present in Luther. The Luther court did not consider alienage jurisdiction or its policy rationale when rendering its opinion, and, as a result, Luther's reasoning is inapplicable. Thus, while Defendants acknowledge that in Coffey, this Court stated that removal based on a "Securities Act claim satisfying CAFA's requirements" was "likely a losing proposition under Luther," Coffey, 2018 WL 3812076, at *4, Defendants respectfully submit that Luther is distinguishable from this particular Action because Luther did not involve, and therefore did not consider, alienage jurisdiction. As such, Luther does not answer the question of whether Section 22(a) bars removal *here*. Luther's holding should remain limited to its facts and should not be expanded to the distinct circumstance of alienage jurisdiction.[4]

1. Alienage Jurisdiction Rests On Uniquely Federal Concerns

Article III, Section 2 of the United States Constitution provides federal courts with jurisdiction to hear cases and controversies between "a State, or the Citizens thereof, and foreign States, Citizens or Subjects." U.S. Const., art. III, § 2. Although this so-called "alienage

[4] Plaintiff also cites this Court's statement during argument on the plaintiff's motion to remand in Coffey that if the plaintiff had alleged solely claims arising out of the Securities Act, the Court would have remanded the action. (Declaration of John T. Jasnoch in Support of Plaintiff's Motion to Remand ("Jasnoch Decl.") Ex. A at 28:17-19.) However, in Coffey, Defendants did not argue, and the Court did not consider, whether a removal based on alienage jurisdiction would affect its analysis of whether Luther was binding. See generally Coffey, 2018 WL 3812076.

jurisdiction" has often been coupled with diversity jurisdiction—both alienage and diversity jurisdiction are included in the same statutory provision, 28 U.S.C. § 1332—"more exacting scrutiny of the historical context in which alienage jurisdiction was conceived reveals that the rationale underpinning [alienage] is distinct from diversity jurisdiction and that its purpose is to protect peculiarly federal interests that federal courts were specifically designed to adjudicate." 17th St. Assoc., LLP v. Markel Int'l Ins. Co., 373 F. Supp. 2d 584, 603 (E.D. Va. 2005).

In particular, "during and after the Revolution, state courts were notoriously frosty to British creditors trying to collect debts from American citizens," potentially in violation of the 1783 Treaty of Paris, which caused protests from the British Secretary of State. JPMorgan Chase Bank v. Traffic Stream (BVI) Infrastructure Ltd., 536 U.S. 88, 94-95 (2002). "This penchant of the state courts to disrupt international relations and discourage foreign investment led directly to the alienage jurisdiction provided by Article III of the Constitution." Id. "[A]lienage jurisdiction was necessary to 'avoid controversies with foreign powers' so that a single State's courts would not 'drag the whole community into war.'" Id. at 96.

Reflecting the importance of these policies, the very first Congress enacted an alienage jurisdiction statute. See Traffic Stream, 536 U.S. at 96. "In short, the Founding Generation prioritized providing a federal forum in cases involving alien litigants because it was viewed as central to the success and stability of the new Republic." 17th Street, 373 F. Supp. 2d at 604. "[W]hile diversity jurisdiction guarantees non-diverse litigants a tribunal free from actual and perceived prejudice, alienage jurisdiction additionally protects the Nation's economic and political security and advances international comity and tranquility." Id. at 605.

Modern authorities recognize that the original and distinct purpose of alienage jurisdiction has endured. See, e.g., Traffic Stream, 536 U.S. at 96; 17th Street, 373 F. Supp. 2d at 605 ("The importance of these goals has only increased with time as both international relations and global trade have become more complex and our nation has assumed a central role in both." (quoting Koehler v. Bank of Bermuda (N.Y.) Ltd., 229 F.3d 187, 193 (2d Cir. 2000) (Sotomayor, J., dissenting))); Favour Mind Ltd. v. Pac. Shoes, Inc., 1999 WL 1115217, at *9 (S.D.N.Y. Dec. 7, 1999) ("Alienage jurisdiction recognizes that foreign states are prone to hold the nation as a whole

responsible for the treatment of [their] citizens. Accordingly, legal actions involving citizens of a foreign state ought to be heard in a federal court which is more accountable to the nation than to regional political interests."); 15 Moore's Federal Practice - Civil § 102.73 (2018) ("Alienage jurisdiction was intended to provide the federal courts with a form of protective jurisdiction over matters implicating international relations, in which the national interest is paramount," including when "entanglements with other sovereigns that might ensue from failure to treat the legal controversies of aliens on a national level."). In fact, at least one court has concluded that because alienage jurisdiction "involves a peculiarly federal interest," it warrants "the elimination of the general presumption" against removal. 17th Street, 373 F. Supp. 2d at 602.

2. CAFA And This Case Directly Implicate The Concerns Underlying Alienage Jurisdiction

The purposes animating the inclusion of alienage jurisdiction in Article III of the Constitution are equally relevant when interpreting the expansion of alienage jurisdiction under CAFA. See Life of the S. Ins. Co. v. Carzell, 851 F.3d 1341, 1347 (11th Cir. 2017) (discussing original purpose behind alienage jurisdiction—"to promote international relations by assuring other countries that litigation involving their nationals will be treated at the national level"—in the context of interpreting CAFA). Just as it did with diversity jurisdiction, CAFA loosened the requirements for alienage jurisdiction for class actions involving more than $5 million and 100 putative class members to require only minimal, rather than complete, foreign citizenship among the parties. Thus, CAFA authorizes original jurisdiction and removal whenever "any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State." 28 U.S.C. §§ 1332(d)(2)(B), 1453(a). Congress's stated goals for CAFA are consistent with the federal policies underlying alienage jurisdiction: to prevent individual state courts from making judgments that bind the entire country, to facilitate interstate (including international) commerce, and to "restore the intent of the framers of the United States Constitution by providing for Federal court consideration of interstate cases of national importance." Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4, § 2(a)(4)(C), (b)(2), (b)(3); cf. 15 U.S.C. § 77b(a)(7) (defining "interstate commerce" to include commerce with foreign countries).

Indeed, as the court in New Jersey Carpenters Vacation Fund v. HarborView Mortgage

Loan Trust 2006-4, 581 F. Supp. 2d 581, 583-84 (S.D.N.Y. 2008), noted, CAFA expanded jurisdiction not only for national class actions, but also for those that are "international in scope." As such, a "large, non-local securities class action dealing with a matter of national importance, the mortgage-backed securities crisis that is currently wreaking havoc with the national and ***international*** economy," was "exactly the type of case CAFA was concerned about." HarborView, 581 F. Supp. 2d at 587-88; see also id. at 585 (concluding that removal was appropriate under CAFA because the plaintiff's claims addressed "an issue of national, if not ***global***, importance").[5]

This Action squarely implicates the original purposes of alienage jurisdiction and CAFA's extension of it. An international class action necessarily implicates foreign relations because it "requires an examination of potential international law and treaty obligations, a careful evaluation of the laws of the countries involved, and an examination of the potential cultural, linguistic, and logistical implications." See Debra Lyn Bassett, U.S. Class Actions Go Global: Transnational Class Actions and Personal Jurisdiction, 72 Fordham L. Rev. 41, 44 (2003). For example, if a class is ultimately certified, the resulting judgment should preclude future claims by class members, including claims brought in foreign courts. See Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 805, 808 (1985). However, whether and under what circumstances foreign courts will recognize the preclusive effect of a U.S. class action judgment is questionable. See In re Vivendi Universal, S.A., 242 F.R.D. 76, 93-96 (S.D.N.Y. 2007) (collecting cases and examining the preclusive effect of U.S. judgments in various foreign courts). If certified, this Action could thus raise conflicts with foreign countries regarding the ability of U.S. courts (even more so a California state court) to bind absent class members. See Bassett, supra, at 81 (noting that "[c]arelessness and overreaching in asserting jurisdiction over foreign citizens [through the class action device] may cause offense or resentment in foreign countries"). Such complex considerations of foreign law and policy weigh in favor of adjudication in federal, not state, court.

Moreover, federal courts have robust procedural protections for absent class members that

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[5] Plaintiff asks this Court to ignore HarborView because its conclusion—that cases asserting only Securities Act claims were removable under CAFA—is supposedly inconsistent with Luther. (Mot. 5 n.7.) However, neither Luther nor Plaintiff disputes the HarborView court's explanation of the purposes behind CAFA.

California state court lacks. In particular, CAFA itself provides "stricter scrutiny of counsel, awards, and settlements." HarborView, 581 F. Supp. 2d at 584; see also 28 U.S.C. §§ 1711-1715 (provisions of CAFA providing protections for class members). For example, Section 1714 of CAFA prohibits approval of "a proposed settlement that provides for the payment of greater sums to some class members than to others solely on the basis that the class members to whom the greater sums are to be paid are located in closer geographic proximity to the court"—a provision that explicitly prevents prejudice to foreign citizens. 28 U.S.C. § 1714. Also, the Private Securities Litigation Reform Act ("PSLRA"), which applies to this Action, provides (i) a procedure by which putative class members are notified of the suit and given an opportunity to seek appointment as "lead plaintiff;" (ii) qualifications for the "lead plaintiff," appointment by the court of the "lead plaintiff," and approval of his or her selection of counsel; (iii) a prohibition of the lead plaintiff recovering more than the rest of the class; (iv) pubic filing of settlements; (v) limitations on attorneys' fees; and (vi) particular notice requirements for any settlement. See 15 U.S.C. § 77z-1(a)(1) (applying these provisions to any class action brought pursuant to the Federal Rules of Civil Procedure and arising under the Securities Act). The availability of these protective procedures in federal court enhances fairness to foreign class members, furthering the aim of alienage jurisdiction of avoiding harm to foreign relations from state-court adjudication. See Favour Mind, 1999 WL 1115217, at *9 (noting that alienage jurisdiction is intended to avoid a negative effect on foreign relations from perceptions of unfair treatment of foreign citizens).[6]

Furthermore, the subject matter of this Action—raising "issues of first impression regarding the federal securities laws applicability to a nascent technology," Coffey, 2018 WL 3812076, at *7—squarely implicates foreign relations. Courts have recognized that application of U.S. securities laws to foreign investors raises issues for foreign relations. See Morrison v. Nat'l Australia Bank Ltd., 561 U.S. 247, 269-70 (2010) (describing complaints from foreign

[6] Even though these provisions are designed to protect the absent class members that Plaintiff proposes to represent, Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit, 547 U.S. 71, 81 (2006), Plaintiff wishes to avoid them by suing in state court. This provides yet another reason that the policies of CAFA are implicated here: the "careful[] craft[ing]" of a complaint "to solely allege claims under the [Securities] Act to be able to invoke its anti-removal provision" and to "avoid federal jurisdiction is one of the problems explicitly identified and targeted by CAFA." HarborView, 581 F. Supp. 2d at 586 n.7.

governments regarding "interference with foreign securities regulation" should U.S. securities law apply to foreign transactions). Here, countries throughout the world are currently considering how and whether to regulate virtual currencies. (See, e.g., Ex. 4 (comparing regulations in 130 countries).) For example, the Israel Securities Authority, in Plaintiff's home country, recently issued an interim report examining "the application of the Securities Law for offers and issuances to the public in Israel based on Distributed Ledger Technology." (Ex. 5 at 3.) The report made multiple recommendations depending on the type of virtual currency involved. (Id. at 14.) One of its aims was to "increase certainty concerning the application of the Securities Law to the sector, which is vital to both the development of the industry in Israel and the continuation of investors' trust in the capital market." (Id. at 9.)

As alleged, the putative class in this case includes foreign plaintiffs who purchased XRP on foreign exchanges, including the named plaintiff who is from Israel and has not indicated where in the global market he purchased XRP, despite undoubtedly being in possession of such facts. It is indisputable that countries have taken different approaches towards regulating virtual currencies, and a determination in this case, especially as applied to foreign plaintiffs and foreign exchanges, could conflict with the frameworks in one or more other countries.[7] Accordingly, any decision concerning whether XRP is a "security" could significantly disrupt the regulatory processes and regimes in multiple countries. For example, a decision that conflicts with Israel's developing regulations would, at a minimum, disrupt the "certainty" that Israeli authorities are attempting to create and circumvent Israel's right to protect its own citizens as it sees fit. (Id. at 9.) If the California court decides that XRP is a security (and it should not), such a decision would likely negatively affect the future availability and value of XRP in foreign countries, including in countries that welcome the use of virtual currencies and do not treat them as securities. (See, e.g., Ex. 6 (describing Thai SEC regulations that find cryptocurrencies are not securities).) Indeed, many countries may not welcome the application of United States law to virtual currencies because

[7] Plaintiff suggests his own Complaint may be subject to dismissal to the extent it "addresses 'international transactions.'" (Mot. 5:8-10.) Defendants agree and do not concede that the Securities Act applies to Plaintiff's or any other foreign citizen's purchase of XRP. However, for purposes of this Motion, Defendants assume that the Court would apply the Securities Act in the matter Plaintiff seeks.

they could and have taken the position that such regulation disrupts innovation and economic growth within their borders. In sum, because any substantive decision in this putative international class action could affect foreign relations, consistent with the purpose of alienage jurisdiction, the Action should remain in federal court.

Any argument that alienage jurisdiction is primarily intended to protect foreign *defendants* or that the Court should defer to Plaintiff's choice of forum is misplaced. Alienage jurisdiction originated from concerns that foreign governments perceived that their citizens, suing as *plaintiffs* in state court, were not receiving justice—it was not about protecting foreign defendants. (See supra Part IV.A.1.) Moreover, it is irrelevant that Plaintiff, although a foreign citizen, apparently wishes to proceed in California state court. For one thing, Plaintiff wishes to represent a class of citizens from around the world, who may well prefer a federal forum. More fundamentally, the purpose of alienage jurisdiction is to protect "peculiarly federal interests that federal courts were specifically designed to adjudicate" in order to ensure "economic and political security and advance[] international comity and tranquility." 17th Street, 373 F. Supp. 2d at 603-05. These overarching, uniquely federal concerns outweigh Plaintiff's individual desire to litigate in state court and confirm that the Action should not be remanded. See Favour Mind, 1999 WL 1115217, at *9 ("The drafters' worry that foreigners not suffer prejudice in state courts reflected their concern that such prejudice might harm foreign relations; avoiding prejudice to the individual foreigners themselves was not an independent concern"); see also Coffey, 2018 WL 3812076, at *7 (quoting Senate Report on CAFA that concluded that cases that "involve more people, more money, and more interstate commerce ramifications" belong in federal court).

3. The Policies Behind Alienage Jurisdiction Render Luther Inapposite

The presence of alienage jurisdiction under CAFA, and its implications for foreign relations issues, make Luther distinguishable from this case. The Luther court was not asked to consider, and did not consider, the "peculiarly federal interest[s]" alienage jurisdiction raises, 17th Street, 373 F. Supp. 2d at 602, or the effect on Section 22(a) of CAFA's extension of alienage jurisdiction. Rather, Luther considered only whether Section 22(a) barred removal of a securities case where the action was removed based on the minimal diversity provisions of CAFA. The Luther court applied

the maxim of statutory interpretation "that a statute dealing with a narrow, precise, and specific subject is not submerged by a later enacted statute covering a more generalized spectrum." Luther, 533 F.3d at 1034. It reasoned that the removal bar in Section 22(a) was "more specific" than the authorization of removal in CAFA because Section 22(a) "applies to the narrow subject of securities cases" whereas CAFA applies to a "generalized spectrum" of "high-dollar class actions involving diverse parties." Id. at 1032, 1034.

Had the Luther court addressed the interaction between Section 22(a) and CAFA in light of the peculiarly federal policies raised by alienage jurisdiction—the situation presented here—it would have reached the opposite result. In applying the canon of statutory construction that the more specific statute controls the more general, overlapping statute, Luther relied on Radzanower v. Touche Rosss & Co., 426 U.S. 148 (1976). Luther, 533 F.3d at 1034. In Radzanower, the Supreme Court considered two venue provisions—the venue provision in the National Bank Act, which allows national banking associations to be sued only in the district where they are established, and the venue provision in the Securities Exchange Act of 1934 ("Exchange Act"), which allows suits wherever the defendant may be found. Radzanower, 426 U.S. at 149-50. In concluding that the later-enacted and more general Exchange Act did not impliedly repeal the more specific National Bank Act, the Court considered the different policies behind the enactments. Id. at 155-56. Enforcing the National Bank Act's narrower venue provision would serve its purpose of preventing inconvenience to banks and would not "'unduly interfere' with the operation" of the Exchange Act. Id. at 156.

Here, the opposite is true—enforcing Section 22(a)'s removal bar will not further its purpose and will "unduly interfere" with alienage jurisdiction, confirming that this Action should not be remanded. The purpose of Section 22(a)'s removal bar was to ensure that local plaintiffs had access to a local courthouse. See E. Merrick Dodd, Jr., Amending the Securities Act—The American Bar Ass'n Committee's Proposals, 45 Yale L. J. 199, 224 (1935) ("The principal objections to permitting removal is that there are a relatively small number of federal trial courts, and that to allow defendants to remove all cases to the federal courts would enable them in many instances to remove the case to a point remote from the plaintiff's home and inconvenient for

him.”). Justice Felix Frankfurter, one of the principal architects of the Securities Act, wrote a few years before the Securities Act was enacted that removal bars were desirable “whenever federal rights arise out of transactions which are dominantly local and readily lend themselves to state remedies.” Felix Frankfurter, Distribution of Judicial Power of Federal and State Courts, 13 Cornell L. Q. 499, 517 (1928); see also James M. Landis, Legislative History of the Securities Act of 1933, 28 Geo. Wash. L. Rev. 29, 33, 36-37 (1959) (describing Justice Frankfurter’s role with respect to the Securities Act). Here, this lawsuit is not “dominantly local” at all. Rather, it involves a plaintiff seeking to assert claims on behalf of a putative international class, concerning an issue of first impression—whether a virtual currency, XRP, is a security—a question that policymakers around the world are currently debating about virtual currencies generally. Cf. Morrison, 561 U.S. at 268-69, 272 (observing that the Securities Act does not apply to sales outside of the United States and referencing recent trend of securities class actions brought on behalf of foreign investors). Thus, applying the removal bar and litigating this Action in state court would in no way further the purpose of Section 22(a).

However, application of the removal bar here would “unduly interfere” with the operation of alienage jurisdiction under CAFA. Radzanower, 426 U.S. at 156. CAFA's purpose was to ensure a federal forum for large putative international class actions affecting foreign relations and interstate commerce. Applying Section 22(a)’s removal bar to such actions, like this one, would close the federal courts to cases concerning foreign citizens and the interests of foreign nations—exactly the type of matters that Congress, through CAFA’s provision for alienage jurisdiction, determined should be adjudicated in a federal forum. See Coffey, 2018 WL 3812076, at *7 (observing that application of Section 22(a) to bar CAFA removal “would significantly expand the types of class actions exempt from removal under § 1453”). Accordingly, not only did Luther not address removal under CAFA’s alienage provision at all, but if it had, the Luther court very likely would have reached a different conclusion based on the reasoning it employed in that case. See Cobalt Partners, LP v. Sunedison, Inc., 2016 WL 4488181, at *6 (N.D. Cal. Aug. 26, 2016) (distinguishing Luther in concluding that 28 U.S.C. § 1452, providing for removal of cases related to bankruptcy proceedings, trumped Section 22(a) because “even if our court of appeals were to

conclude that Section 22(a) *is* more specific than Section 1452(a)," it would conclude that "such an interpretation should be avoided under Radzanower because it would 'interfere with the operation of the Bankruptcy Code, especially in large chapter 11 cases") (alteration in original); Federal Home Loan Bank of San Francisco v. Deutsche Bank Sec., Inc., 2010 WL 5394742, at *6 (N.D. Cal. Dec. 20, 2010) (distinguishing Luther because application of Section 22(a) to cases removed under Section 1452(a) would "unduly interfere" with its operation).

B. The Plain Language Of CAFA Permits Removal Despite Section 22(a)

Plaintiff has identified no basis for remanding this Action other than his overly broad interpretation of Luther. Thus, to determine whether this Action is removable under CAFA, the Court should employ the same reasoning it recently employed in Coffey. In Coffey, this Court concluded that, notwithstanding Section 22(a), CAFA permits removal of an action that includes both state law claims and claims under the Securities Act. In so concluding, the Court began with the plain language of CAFA. Coffey, 2018 WL 3812076, at *6. As the Court observed, CAFA's removal provision, Section 1453(b), provides:

> [a] class action [meeting the requirements of Section 1332(d)] may be removed to a district court of the United States in accordance with section 1446 . . . without regard to whether any defendant is a citizen of the State in which the action is brought . . . by any defendant without the consent of all defendants.

Id. at *6. Under Section 1453(d), CAFA excepts certain class actions from removal that "solely" involve a claim: (1) concerning a "covered security," as defined by 15 U.S.C. § 77p(f)(3); (2) relating to the internal affairs or governance of a corporation and arise under the laws of the state in which such corporation was formed; or (3) relating to the rights, duties, and obligations relating to or created by or pursuant to any security. See 28 U.S.C. § 1453(d)(1)-(3). "[R]ead as a whole, CAFA's plain language 'creates original jurisdiction for and removability of all class actions that meet the minimal requirements and do not fall under one of the limited exceptions.'" Coffey, 2018 WL 3812076, at *7 (quoting HarborView, 581 F. Supp. 2d at 584); see also Katz v. Gerardi, 552 F.3d 558, 562 (7th Cir. 2009) (concluding that claims falling within the exceptions are not removable, but "[o]ther securities class actions are removable if they meet the requirements of" CAFA). It is undisputed that none of CAFA's three limited exceptions applies here.

In Coffey, the Court rejected the plaintiff's invitation to read a fourth exception into Section 1453 for cases falling within the removal bar in Section 22(a). See Coffey, 2018 WL 3812076, at *8. In doing so, the Court compared CAFA's Section 1453 to the general removal statute, Section 1441(a), which provides: "***Except as otherwise provided by Act of Congress***, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed . . . ." 28 U.S.C. § 1441(a). "Both prior to and after CAFA's enactment in 2005, courts have interpreted § 1441(a)'s broad except clause as a reference to antiremoval provisions in other federal statutes." Coffey, 2018 WL 3812076, at *8 (collecting cases).

Significantly, however, "[d]espite knowing exactly how to make a removal provision subordinate to antiremoval statutes, Congress chose not to do so for § 1453." Coffey, 2018 WL 3812076, at *8. "Instead, Congress chose to enumerate only three specific exceptions to removal under § 1453." Id. "The absence of § 1441(a)'s except clause, or anything even resembling it, weighs heavily against reading such a broad exception into § 1453." Id. This is especially so given that the specific exceptions in Section 1453(d) pertain to certain types of securities claims. "That Congress considered and excepted one part of the Securities Act but did not reference § 22(a), strongly suggests that the court should not read additional Securities Act exceptions into CAFA." Id. at *9.

Moreover, any interpretation under which Section 22(a) barred removal under CAFA, even though CAFA has no "except" clause, would render the "except" clause in Section 1441(a) superfluous. See Duncan v. Walker, 533 U.S. 167, 174 (2001) (noting rule of statutory interpretation against treating "statutory terms as surplusage"). As this Court observed in Coffey: "if § 1441(a)'s except clause is to be taken seriously, then it should not be read into every [other] removal statute" because it would "render[] the except clause entirely superfluous." Coffey, 2018 WL 3812076, at *9. "By contrast, if [the court] give[s] effect to every clause in Section 1441(a), the statutory conflict between [§ 1453(b)] and Section 22(a) dissolves." Id. (alteration in original) (quoting California Pub. Emps.' Ret. Sys. v. WorldCom, Inc., 368 F.3d 86, 106 (2d Cir. 2004)).

Likewise, Section 1453(b) "itself becomes largely superfluous if it is read to include § 1441(a)'s exception." Coffey, 2018 WL 3812076, at *10. Section 1332(d)(2) grants courts

original jurisdiction over class actions satisfying CAFA's requirements. 28 U.S.C. § 1332(d)(2). Thus, "an action satisfying CAFA's diversity requirements could be removed pursuant to § 1441(a)," but this "would subject the removal to § 1441(a)'s except clause and the entire array of federal antiremoval statutes," including § 22(a)'s removal bar. Coffey, 2018 WL 3812076, at *10. "If Congress wanted that result, it could have omitted § 1453(b) entirely. Instead, Congress enacted an entirely different removal provision that does not include anything resembling § 1441(a)'s broad except clause." Id. Thus, the text and structure of CAFA confirm that Congress did not intend for Section 22(a)'s removal bar to apply to cases removed pursuant to CAFA.

Although the Court in Coffey was considering an action that asserted both state law and Securities Act claims, the Court's reasoning applies with equal force here, where only Securities Act claims are asserted. Indeed, in other cases interpreting the interplay between Section 22(a) and other removal statutes, courts employing reasoning similar to that of the Court in Coffey concluded that actions asserting only Securities Act claims were removable. For example, in WorldCom, the court concluded that an action asserting only Securities Act claims was removable, notwithstanding Section 22(a)'s removal bar, pursuant to "related to" bankruptcy jurisdiction in 28 U.S.C. § 1452. WorldCom, 368 F.3d at 106. The court reasoned:

> [W]hen an anti-removal provision such as Section 22(a) is invoked, the threshold question is whether removal is being effectuated by way of the general removal statute, 28 U.S.C. § 1441(a), or by way of a separate removal provision that "grants *additional* removal jurisdiction in a class of cases which would not otherwise be removable under the prior grant of authority." If removal is being effectuated through a provision that confers *additional* removal jurisdiction, and that provision contains no exception for nonremovable federal claims, the provision should be given full effect.

Id. at 107 (emphasis in original); see also Pac. Life Ins. Co. v. J.P. Morgan Chase & Co., 2003 WL 22025158, at *2 (C.D. Cal. June 30, 2003) ("Section 22(a) proscribes removal based on federal question jurisdiction under 28 U.S.C. section 1441(a), but does not prevent removal based on other grounds."); FDIC v. Countrywide Fin. Corp., 2012 WL 12897152, at *1-2 (C.D. Cal. Mar. 20, 2012) (concluding that Section 22(a) did not bar removal pursuant to pre-2011 version of Section 1441(b)). As this Court confirmed in Coffey, the plain language of CAFA provides such "additional" removal jurisdiction, and actions removable under CAFA—like the instant Action—

are not subject to removal bars such as Section 22(a).

In his Motion, Plaintiff does not address the plain language of CAFA or the Court's reasoning in Coffey. The Court's recognition in Coffey that Section 1453 should be "'read broadly, with a strong preference that interstate class actions should be heard in a federal court,'" Coffey, 2018 WL 3812076, at *7—unlike Luther's wooden application of the Section 22(a) removal bar—properly respects the purpose of alienage jurisdiction and confirms that this Action should remain in federal court.

C. Luther Was Wrongly Decided And Should Be Limited Or Reconsidered

If the Court nonetheless concludes that Luther applies, Defendants respectfully submit that, in light of subsequent developments, Luther should be limited to its facts and not expanded to bar the removal of international class actions, or it should be reconsidered. Indeed, the author of the district court opinion affirmed by the Ninth Circuit in Luther, the Honorable Mariana Pfaelzer, observed in a later case, "Defendants appear to have nonfrivolous arguments for a change in law due to post-Luther developments." Pub. Emps. Ret. Sys. of Miss. v. Morgan Stanley, 605 F. Supp. 2d 1073, 1075 n.1 (C.D. Cal. 2009). Such arguments are equally present here.

To begin, "part of Luther's reasoning has been undermined by the Supreme Court's decision in" Dart Cherokee Basin Operating Co., LLC v. Owens, 135 S. Ct. 547, 551 (2014). Coffey, 2018 WL 3812076, at *4. As this Court explained, "[t]he Luther court relied on the Ninth Circuit's general rule that 'removal statutes are strictly construed against removal,' and that 'any doubt is resolved against removability.'" Id. However, in Dart Cherokee, the Supreme Court concluded that "'no antiremoval presumption attends cases invoking CAFA, which Congress enacted to facilitate adjudication of certain class actions in federal court.'" Coffey, 2018 WL 3812076, at *4 (quoting Dart Cherokee, 135 S. Ct. at 554). As such, the Ninth Circuit has "recognized that Dart Cherokee undermines Luther's reasoning on that point." Id. (citing Jordan v. Nationstar Mortg. LLC, 781 F.3d 1178, 1183 n.2 (9th Cir. 2015)). "And one [other] authority has suggested that Dart Cherokee's 'assertion that no antiremoval presumption applies to cases removed under CAFA,' calls into question Luther's holding regarding § 22(a) and § 1453." Id. (quoting Moore et al., 16 Moore's Federal Practice - Scope of Removal § 107.91[1][b] (2018)).

That Luther's reasoning has been undermined by the Supreme Court is another reason to conclude that the Luther court would not reach the same result if presented with the question raised here.

Moreover, shortly after the Ninth Circuit decided Luther, the Court of Appeals for the Seventh Circuit considered the exact same issue as Luther—the removability of Securities Act claims pursuant to CAFA—and reached the opposite conclusion, holding that such actions *are* removable. See Katz, 552 F.3d at 558. In an opinion authored by Judge Easterbrook, the court began by noting that "[u]sually the older law"—Section 22(a)—"yields to the newer"—CAFA. Id. at 561. Discussing the reasoning in Luther, the court noted that the "[t]he canon favoring preservation of specific statutes arguably affected by newer, but more general, statutes works when one statute is a subset of the other." Id. However, "§ 22(a) of the [Securities] Act is not a subset" of CAFA. Id. The court reasoned:

> Section 22(a) covers only securities actions, but it includes all securities actions—single-investor suits as well as class actions, small class actions as well as large multi-state ones. [CAFA], by contrast, covers only large, multi-state class actions. Is the [Securities] Act more specific because it deals only with securities law, or is [CAFA] more specific because it deals only with nationwide class actions? There is no answer to such a question, which means that the canon favoring the specific law over the general one won't solve our problem.

Id. at 561-62. Other courts have also rejected the view that Section 22(a) is a more specific statute. See, e.g., WorldCom, 368 F.3d at 101-02 (rejecting argument that Section 22(a) is more specific than Section 1452, which permits removal of actions related to bankruptcy proceedings, concluding, "Section 22(a) does not cover only a subset of the universe of claims that are 'related to' a bankruptcy case; rather it applies to numerous claims that are in no way 'related to' a bankruptcy, just as Section 1452(a) applies to numerous claims that are not brought under the [Securities] Act"); Passarella v. Ginn Co., 637 F. Supp. 2d 353, 354 (D.S.C. 2009) (citing Katz and concluding that the "cannon of statutory construction" on which Luther relied "is not particularly useful" in determining whether CAFA or removal bar in ILSA is more specific); HarborView, 581 F. Supp. 2d at 586 (rejecting Luther's conclusion that Section 22(a) was more specific than CAFA because both statutes were "specific and narrowly-tailored"). As Professor Joseph M. McLaughlin observed in his treatise, Luther "offered no reasons to support its assertion that the [Securities] Act

was [] more specific" than CAFA. 2 McLaughlin on Class Actions § 12:6 (14th ed. 2017).

Because Luther improperly assumed that the Securities Act is more specific than CAFA, Luther wrongly applied the "basic principle of statutory construction that a statute dealing with a narrow, precise, and specific subject is not submerged by a later enacted statute covering a more generalized spectrum." Luther, 533 F.3d at 1034 (citation omitted). In reality, that principle has no application to Section 22(a) and CAFA.

Subsequent authorities have also confirmed that Luther's conclusion that Section 22(a) provides an "express exception to removal" contradicts the plain language of CAFA. Luther, 533 F.3d at 1034. To begin with, as noted above, unlike Section 1441(a), which permits removal "[e]xcept as otherwise expressly provided by Act of Congress," 28 U.S.C. § 1441(a), CAFA's removal statute contains no such general exception, 28 U.S.C. § 1453. This alone demonstrates that Congress did not intend Section 22(a) to provide an exception to CAFA removal—a point Luther did not address. See Coffey, 2018 WL 3812076, at *9; HarborView, 581 F. Supp. 2d at 587 ("Had Congress wanted to treat CAFA like the general removal statute of § 1441(a) and leave intact other statutory regimes, it could have easily done so."); Passarella, 637 F. Supp. 2d at 355 (observing that Section 1453 does not include a "qualification on the ability to remove an action").

Additionally, the express language of CAFA instructs how CAFA "applies to corporate and securities actions." Katz, 552 F.3d at 562. CAFA contains specific, narrowly enumerated exceptions to removal jurisdiction (none of which applies here) for certain securities class actions—those "concerning a covered security," relating to the internal affairs of a corporation, or relating to the rights, duties, and obligations relating to or created by or pursuant to any security. Id.; see also 28 U.S.C. § 1453(d)(1)-(3). "This [list of exceptions] tells us all we need to know." Katz, 552 F.3d at 562. Claims falling within the three enumerated exceptions are not removable; "[o]ther securities class actions are removable if they meet the requirements of" CAFA. Id. In other words, the presence of these narrow, enumerated exceptions contradicts any assertion that other, unstated exceptions also exist. See Blausey v. United States Tr., 552 F.3d 1124, 1133 (9th Cir. 2009) ("The general rule of statutory construction is that the enumeration of specific exclusions from the operation of a statute is an indication that the statute should apply to all cases

not specifically excluded."). To read CAFA's categorical right of removal as subject to an unstated, overarching exception for actions that include Securities Act claims "would be to make most of § 1453(d) pointless." Katz, 552 F.3d at 562.

Other courts considering the interplay between CAFA and antiremoval statutes have reached the same conclusion as the Seventh Circuit in Katz. See Passarella, 637 F. Supp. 2d at 355 ("CAFA is the more recently enacted statute; it provides a right to removal for qualifying class actions; and it spells out three exceptions to its grant of a right of removal. . . . [T]here is little guesswork in surmising that Congress intends some substantial revisions when it grants a categorical right to removal and provides for only limited, specific exceptions"); HarborView, 581 F. Supp. 2d at 587 ("CAFA's sole limitations are those exclusively listed in the defined exceptions."). Post-Luther developments have repeatedly called into question the validity of its holding. Therefore, that holding should be limited or reconsidered, and this international class action should be removable under CAFA.

V. PLAINTIFF'S ARGUMENTS ABOUT EFFICIENCY DO NOT JUSTIFY REMAND

Plaintiff argues that "Defendants' removal has delayed this case from properly proceeding in state court and threatens to undermine judicial economy" because the similarities between this Action and two state court actions require coordination. (Mot. 5-6.) As established above, Defendants are entitled to the federal forum because this Action meets the requirements for removal under CAFA. Plaintiff cites no authority for the proposition that notions of "judicial economy" or the need for coordination could somehow nullify Defendants' statutory right to removal.

In any event, Plaintiff's purported desire for "judicial economy" is belied by the fact that Plaintiff chose to file his Action months after three similar actions had been filed. When Plaintiff filed his Action, it was duplicative of the Coffey action, which had been removed a month earlier and was then pending before this Court. There would be no need for "coordination" if Plaintiff had not chosen to file an extra suit. If Plaintiff and his counsel were truly interested in avoiding delay—as opposed to attempting to evade the procedural protections of CAFA and the PSLRA—they could have refrained from filing their Motion, and this Action would be proceeding apace.

Finally, Plaintiff's contention that "[n]otably, Defendants did not seek to remove Zakinov and Oconer to this Court," to the extent it is intended to suggest that the instant Action was not properly removed, is misleading. (Mot. 6:6-7.) The Zakinov and Oconer actions assert only California state law claims and are brought solely on behalf of California citizens against Defendants who are alleged to be California citizens. (Jasnoch Decl. Exs. B, C.) Thus, neither the alienage nor the minimum diversity requirements of CAFA are satisfied, in contrast to Coffey and the instant Action, and there is no basis for removing Zakinov or Oconer. The fact that Defendants are facing duplicative litigation, including some actions that are not removable, cannot deprive Defendants of their statutory right to a federal forum where it exists, as here.

VI. CONCLUSION

For the reasons stated herein, this Court should deny Plaintiff's Motion.

DATED: September 21, 2018

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